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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

14 Cr. 0534-01 (JSR)

5 CALVIN R. DARDEN, JR.,

6 Defendant.

7 -----x

8 March 18, 2019

9 3:14 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
17 Southern District of New York

BY: ANDREW ADAMS

18 Assistant United States Attorney

19 FEDERAL DEFENDERS OF NEW YORK INC.

Attorneys for Defendant

BY: JENNIFER L. BROWN

20 - also present -

21 Ryan Lehr, U.S. Probation Department (EDNY)

22 Jaleesa Harris, U.S. Probation Department (SDNY)

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1 THE CLERK: This is March 18, 2019. This is United  
2 States versus Calvin Darden, Jr., Docket Number 14 Cr. 534,  
3 Defendant No. 1.

4 Will everyone please be seated and will the parties  
5 please identify themselves for the record.

6 MR. ADAMS: Yes. Good afternoon, your Honor. Andrew  
7 Adams for the United States, and with me at counsel table are  
8 Probation Officers Ryan Lehr of the Eastern District and  
9 Jaleesa Harris of the Southern District.

10 P.O. LEHR: Good afternoon, your Honor.

11 P.O. HARRIS: Good afternoon, your Honor.

12 THE COURT: Good afternoon.

13 MS. BROWN: Good afternoon, your Honor. Jennifer  
14 Brown for Mr. Darden.

15 THE COURT: Good afternoon.

16 So I guess my first question is where does Mr. Darden  
17 stand in terms of employment?

18 MS. BROWN: Your Honor, he recently obtained  
19 employment --

20 THE COURT: I'm sorry, you need to either bring the  
21 microphone closer to you or -- yes.

22 MS. BROWN: He recently obtained employment full-time,  
23 your Honor, salaried employment. He provided documentation to  
24 the Probation Department. The Probation Department  
25 discussed -- spoke with the potential employer. There was a

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1 slight issue in that the owner of the company also has a prior  
2 conviction but was interested in offering employment to other  
3 people with prior convictions, and so the Probation Department  
4 vetted it more carefully than they otherwise if he didn't have  
5 a prior conviction. So, he is recently, your Honor, employed.

6 THE COURT: So let me just ask the probation officer:  
7 That is all correct?

8 P.O. LEHR: That is correct, your Honor.

9 THE COURT: So what is the nature of the employment.

10 P.O. LEHR: He is head of business development for an  
11 apparel company.

12 THE COURT: And what does he get paid?

13 P.O. LEHR: 51,800. Is that correct?

14 MS. BROWN: 52-8.

15 P.O. LEHR: 52-8, your Honor.

16 THE COURT: OK. Very good.

17 So where we do we stand in terms of him in terms of  
18 restitution?

19 MR. ADAMS: Your Honor, my understanding from Officer  
20 Lehr is that there has been another recent payment in the last  
21 week or so, since the last time we saw the Court. And now that  
22 Mr. Darden has employment, I expect that there is going to be a  
23 further conversation with the Financial Unit with my office to  
24 discuss that payment plan that had been --

25 THE COURT: Well, you may recall -- and let me just

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1 remind you -- that your office unilaterally, without notifying  
2 the Court, reduced the monthly payment to \$200 a month. That  
3 had never been approved by the Court, and I don't want that to  
4 happen again. So, if you enter into any new arrangement, you  
5 had better clear it with me first.

6 MR. ADAMS: Certainly, your Honor.

7 THE COURT: All right?

8 MR. ADAMS: And I will convey all of that to the unit  
9 as well.

10 THE COURT: But now do I understand from what you just  
11 said that he is not -- is he up to date on the \$200 a month, or  
12 no?

13 P.O. LEHR: Yes, he is, your Honor. He made a lump  
14 sum payment of 600.

15 THE COURT: OK. Very good.

16 Then I think the only other issue, which I'm not sure  
17 needs to involve the Court, at least at this point, is there  
18 apparently were some private arrangements reached between  
19 Mr. Darden's father and some of the parties that were owed  
20 restitution so that they would no longer be owed restitution.  
21 Do I have that right?

22 MR. ADAMS: There were private agreements among those  
23 parties, not necessarily for the purpose of satisfying  
24 restitution, but I do think the Court is correct that --

25 THE COURT: Whoa, whoa, whoa, whoa, whoa. If they

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1 weren't for -- a victim presumably, whatever you call it, only  
2 has a sum certain in terms of loss. So if they get paid a  
3 portion of that loss and it's called fibberty-jibberty, it  
4 still reduces what Mr. Darden has to pay -- the defendant,  
5 Mr. Darden, has to pay by way of restitution to that person.

6 MR. ADAMS: Your Honor, respectfully, if it is in a  
7 civil -- if it is in a civil proceeding, either in a state or  
8 federal proceeding, and it is for the same loss that's  
9 calculated in the restitution, that's correct, and there is a  
10 mechanism in the statute that allows for that offset. In this  
11 case, outside of that specific context, I can imagine that the  
12 victim would -- at least one of these victims would probably  
13 say, one, that's not really all I was owed and my loss greatly  
14 exceeds the amount that I paid out directly in furtherance of  
15 the fraud, I had opportunity costs, etc., etc., that might not  
16 actually correspond to what they were seeing. Another victim  
17 in this case may receive a sum that was substantially less than  
18 what their restitution amount is, so regardless of how loss  
19 is -- or how that amount is quantified, they would still be  
20 owed something.

21 But from the government's perspective, there is the  
22 possibility that Mr. Darden, Sr. would have a claim against  
23 either of those victims for subrogation, essentially, but there  
24 is no offset under the restitution statute. And I think the  
25 Court is correct, there is no motion from the government. I

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1 don't believe that there is a motion from --

2 THE COURT: No. If there is no motion from anyone,  
3 then it makes my job easy.

4 But let me ask defense counsel: I understand the  
5 hypotheticals that the government has raised, which may or may  
6 not be accurate because no one has even seen these agreements,  
7 but if in fact payment was made by Mr. Darden's father that  
8 should be offset against his restitution amount, I would have  
9 thought you might like to know that?

10 MS. BROWN: Your Honor, I was unfamiliar with the case  
11 that the government cited, U.S. v. Tutterow, until they  
12 submitted it, and it seems to me that the case cited by the  
13 government does say what they said it is, which is that an  
14 out-of-court settlement does not offset restitution.

15 THE COURT: Well, I don't understand that, and  
16 moreover, while I haven't taken a look at that case, it is a  
17 case from the District of Nevada in 2013, which doesn't make it  
18 binding on me. So why don't we get someone to furnish the  
19 parties with the private agreements.

20 MR. ADAMS: Your Honor, if I could add just one more  
21 piece of information for context? That is, from Mr. Darden,  
22 Sr.'s perspective -- and I have spoken with his counsel -- in  
23 the event that there were some offset for, for example, Open  
24 Gate in this case, Mr. Darden, Sr. has, through his counsel,  
25 expressed to me that he would want to step into their shoes.

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1 So, certainly from his perspective, this was not a payment of  
2 Mr. Darden, Jr.'s restitution obligation, it was a --

3 THE COURT: Well, you know, I have a recollection that  
4 there were family tensions that undoubtedly have escalated  
5 perhaps even further, but I guess my question is this. It is  
6 really a question for defense counsel. Would you like to see  
7 the private agreements so that you can determine whether or not  
8 you may have a claim for reducing Mr. Darden's restitution, or  
9 do you think that is improvident or tactically unwise on your  
10 part?

11 MS. BROWN: May I have a minute?

12 THE COURT: Yes.

13 (Pause)

14 MS. BROWN: Your Honor, I'm not making that request  
15 right now.

16 THE COURT: I'm sorry.

17 MS. BROWN: I am not making that request right now,  
18 your Honor.

19 THE COURT: OK. Well, then there is nothing for me to  
20 do, so, other than make sure that Mr. Darden then remains  
21 liable for the full and total restitution ordered by the Court.

22 But right now \$200 a month will remain in place until  
23 and unless I hear from the government as to any proposal about  
24 that.

25 Well, I'm delighted Mr. Darden has obtained

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1 employment. That was the most important thing, so. And I will  
2 ask the probation officers to keep me fully informed of any  
3 material developments.

4 P.O. LEHR: Yes, your Honor.

5 THE COURT: All right. Very good. Thanks a lot.

6 MR. ADAMS: Thank you, your Honor.

7 THE CLERK: All rise.

8 (Adjourned)